



NEWSLETTER

United Firefighters' Union of Australia Aviation Branch

In this Edition:

1. Travel allowances
2. AvSuper Making a Disability Claim
3. Appointment Sydney Organiser
4. Industrial News

1. Travel Allowances

As you are aware, the Union and Airservices have a different understanding of what was agreed regarding the payment of travel allowances under the new enterprise agreement. I emphasise that the Union did not negotiate an increase in these allowances on the one hand only to allow them to be reduced in the other. Since July 2013, the Union has been actively pursuing Airservices to remedy the matter (seeking to maintain the custom and practice with the application of the payments including the increase negotiated by the Union). The complexities in resolving this issue were complicated further due to tax implications and this has delayed resolution. The Union will continue discussions with Airservices to fully resolve the matter. In the meantime, members should continue to claim these allowances as usual and any adjustments necessary will be made on final settlement of the matter. A further update will be issued as soon as possible.

2. AvSuper – Making a Disability Claim

It is important for members to know how to make successful disability claims. AvSuper have kindly provided the following important information for the benefit of members. Please read the article and keep it somewhere handy in case you have to make a claim.

Making a disability claim

By Sara Stidworthy for AvSuper

It's not something any of us want to happen, but total disablement is a risk we all face – especially those working in riskier occupations like fire fighting.

If you are unable to work due to a serious injury or illness, your super insurance cover may be able to help you deal with the situation. So, here is an overview of AvSuper's disability cover to help you understand your options.

Am I eligible for a claim?

For insurance purposes, disability means you are physically unable to work.

To be eligible for a claim, you must meet the exact definitions in your insurance policy. The definitions specify the types of injuries and illnesses that are covered and include things such as loss of a limb, loss of sight and an inability to care for yourself.

Total and permanent disability (TPD) cover is for a serious injury or illness that means you are unable to ever do any work you are reasonably trained and qualified for. So if you are a trained and experienced fire fighter and permanently lose your sight, you are unable to work as a fire fighter or any associated job and may be eligible for a disability claim. However, if you damaged your leg and couldn't walk, but you were able to work in a fire operations room, for example, you are less likely to qualify.

Total temporary disablement (TTD) cover is also for serious injuries and illnesses, however TTD related to disablement that physically prevents you being able to do your job for a significant time. For example, you may be considered for a serious knee injury that prevents you from working for a significant period of time, while you await surgery or are recuperating.

TTD cover can provide you with money while you are being assessed for TPD and/or while you are recovering, and is separate to any sick leave you may be entitled to. This money can help cover living expenses as well as medical related expenses, and is an additional benefit for our Corporate members.

When assessing your claim, the insurer will consider things such as your age, the actual injury or illness, whether you were working full or part time and any prior work experience (ie if you had another job before fire fighting). Each claim is assessed individually and thoroughly.

How do I actually make a claim?

Making a claim involves letting AvSuper know about your situation. It will involve filling in a claim form and probably will need medical statements and other medical evidence of your condition and inability to work.

The process is different for different types of claims so the easiest solution is to simply ring AvSuper. We can tell you about the relevant eligibility requirements and relevant terms and conditions, confirm your current AvSuper cover arrangements and explain the correct process to you.

Sara Stidworthy is the Administration Manager for **AvSuper, a profit-for-members superannuation fund** dedicated to the aviation industry that also offers income streams. AvSuper operates for the benefit of members, with low fees and strong long-term investment returns and is **open to all Australians** wanting personalised service, access to personalised AvSuper specific advice and **competitively priced insurance options**.

This information is of a general nature only and does not take into account your personal objectives, situation or needs. Before making a decision about AvSuper, you should consider your requirements and the relevant Product Disclosure Statement (PDS). For a copy call 1800 805 088 or visit www.avsuper.com.au. AvSuper (ABN 46 050 431 797, AFSL 239078) is the trustee of the AvSuper Fund (ABN84 421 446 069).

3. Appointment of Sydney Organiser.

Subsequent to the recent invitation for nominations to fill Organiser vacancies at Sydney, Perth and Canberra, Mathew Crook put up his hand for the Sydney vacancy. At its meeting on the 29th August, the BCOM, under rule, appointed Mathew as the new Organiser for Sydney. Welcome to the team Mathew.

4. Industrial News

The following are interesting articles taken from Workplace Express.

19 July 2013

Internet ruling highlights reach of UFU change clause

In a decision that demonstrates the breadth of an enterprise agreement introduction of change clause, the Fair Work Commission has ruled that Melbourne's metropolitan firefighters should have been consulted over the introduction of a one-hour daily limit on

personal internet use.

Commissioner Julius Roe ruled that the new limitation was within the Metropolitan Fire and Emergency Service Board's existing workplace behaviour policy, and was not therefore a proposal to "modify, delete or add to" policies under clause 30 of the MFESB, UFU of Australia, Operational Staff Agreement 2010.

He said he may have reached a different conclusion if the MFB had implemented a total ban on access to sites such as Facebook or if the daily time restriction on such sites was only a few minutes.

"However, a mechanism which restricts access to such sites to 60 minutes per day could hardly be described as an additional restriction beyond a policy which requires that personal use be limited," he said, noting that the MFB had modified its proposal to exclude a wide range of government and external business sites from the restriction.

But the commissioner ruled that the change *did* enliven the consultation provisions in clause 13 of the agreement, which apply to changes to any matters pertaining to the employment relationship by virtue of clause 15.

The dispute came to the FWC after the MFB proposed in December last year to introduce a 60 minute per day personal internet use restriction that would limit access to various sites such as Facebook, Twitter, YouTube and banking portals.

"There is no ambiguity or uncertainty about the scope of Clause 13. It relates to any proposal to implement change in matters pertaining to the employment relationship in any of the workplaces covered by the agreement. It is not limited to significant matters or to matters which may have an impact on employees' jobs or conditions let alone a significant effect upon them."

"The evidence of the UFU witnesses establishes that there has been a long established custom and practice concerning access to the internet. That evidence established the benefits of that access to firefighters.

"The evidence also established that the change proposed by the MFB was a material change to that existing custom and practice," he said.

Demonstrating the reach of the consultation clause, the commissioner said minutes of MFB consultative committee meetings showed that many changes that might in other workplaces be regarded as matters for management prerogative were on the agenda.

He noted that while the issue should have been subject to consultation under the agreement, it was not "a significant change or a change likely to have significant impact on employees but, should in no way be understood as "condoning or encouraging non-observance of the obligations under the Agreement".

"Nor does it remove any rights the UFU might have to enforcement action. It is a practical

assessment, based purely on the particular facts and circumstances of this matter, about what would be a fair and equitable way to resolve the dispute," he said.

09 July 2013 4:39pm

Mentally ill firefighter wins dismissal appeal

A long-serving firefighter has successfully challenged a NSW IRC member's ruling that his dismissal for violently shoving a colleague against a kitchen cupboard was not unfair, after a full bench found that his mental illness had not been taken into account.

President, Justice Roger Boland, and Justices Conrad Staff and Anna Backman agreed with Commissioner Anne Tabbaa's conclusion that the NSW Fire and Rescue firefighter's conduct was unprovoked – it followed some minor banter about whether he had been excluded from a "pizza night" – and amounted to a serious breach of his contract of employment.

They said his actions were "repugnant to the relationship of employer and employee".

"Employees do not have a licence to assault another employee in the workplace because the words or actions of the other employee upset them," the bench said.

But they said Commissioner Tabbaa had failed to consider medical evidence from two psychiatrists and a general practitioner that the firefighter was suffering from a mental disorder at the time of the July 6, 2011, incident.

The firefighter and his union had not sought to rely on the mental condition in their responses to his employer's investigation, and he had not been diagnosed with the condition at the time of the incident.

The evidence was however "squarely before" Commissioner Tabbaa, and the full bench said she was wrong in failing to give "active consideration to the part it played, if any, in causing his actions".

The firefighter was charged with assault under the NSW Crimes Act, but the charge was dismissed by the NSW Local Court on November 8, 2011 – the day after his employment was terminated – under s32(3)(a) of the *Mental Health (Forensic Provisions) Act*, subject to him taking prescribed medication, and adhering to his psychiatrist's treatment plan.

The bench said there could be no doubt that in considering the potential harshness of a dismissal, it might be necessary to take into account mental illness as a mitigating factor.

"No absolute rule can be laid down about this; it will depend on such matters as the nature of the illness, whether the illness is likely to cause a recurrence of the conduct, whether the individual has recovered from the illness and the nature of the conduct itself that led to the decision to dismiss," they said.

The bench said "the weight of the medical evidence" favoured a conclusion that the

firefighter's mental condition contributed to the incident that led to his dismissal.

It said it was open to the commissioner to conclude there was no procedural unfairness, because the medical evidence was not provided to Fire and Rescue, but it was "a step too far to find the absence of that evidence meant the dismissal was not harsh, unreasonable or unjust".

The full bench rejected the employer's argument that Commissioner Tabbaa would not have come to a different result if she had considered the medical evidence.

"If the Commissioner had found, as she should have on the evidence, that mental illness was relevant to an assessment of [the firefighter's] conduct on 6 July 2011 – whether it was serious and wilful justifying dismissal – a different light is cast on the question of whether the dismissal was harsh," the bench said.

It also ruled that Commissioner Tabbaa was wrong to find that the firefighter had shown no remorse after the incident.

The bench found "on balance" that the dismissal was harsh, relying on the firefighter's mental illness to conclude that his actions were aberrant.

It said his mental capacity to deal with situations that increased his personal stress was diminished and instead of dealing with the situation in a reasonable, rational way he resorted to violence.

The bench also took into account his general service record, his 24 years of service, his age (46 at the time of the incident), family circumstances (married with three children under the age of 9) and his remorse.

The bench said the firefighter was not fit to return to the communications centre where he had been working at the time of the incident, nor to mainstream firefighting.

It sent the matter back to Commissioner Tabbaa to determine whether he could be employed in another suitable position under [s89\(2\)](#) of the IR Act.

"In determining whether another position is available that is suitable it will only be suitable if it is a non-stressful environment and allows for [the firefighter] to return to work on a gradual basis. It will also be subject to a commitment by [him] that he will continue to consult a psychiatrist for two years or as the psychiatrist determines," the bench said.

Authorised by Henry Lawrence Branch Secretary UFU of Australia Aviation Branch